DOCUMENT RESUME

ED 117 207 UD 015 592

TITLE Delores Ross, a Minor, by Her Next Friend, Mary Alice Benjamin et al., Plaintiffs United States of America, Plaintiff-Intervenor Vs. Houston Independent School District, et al., Defendants. Civil Action No. 10444.

INSTITUTION District Court, Houston, Tex. Southern District of Texas.

PUB DATE Jul 75

NOTE 55p.

EDRS PRICE MF-$0.76 HC-$3.32 Plus Postage

DESCRIPTORS Caucasian Students; Elementary School Students; *Federal Court Litigation; Free Choice Transfer Programs; Integration Effects; *Integration Litigation; Integration Methods; *Integration Plans; Integration Readiness; *School Integration; School Zoning; Student Distribution; Student Enrollment; Student Placement

IDENTIFIERS Magnet School Plan; *Texas (Houston)

ABSTRACT

On June 1, 1970 The United States District Court for the Southern District of Texas, Houston Division, entered its Memorandum and Order requiring the Houston Independent School District to operate its schools beginning with the 1970-71 school year under an equi-distant zoning plan. The pairings and rezoning as finally ordered were fully implemented by the District at the beginning of the 1971-72 school year. There was, it is asserted, a failure of pairing to maintain an acceptable level of integration over its five-year history, and community dissatisfaction with the pairings. A community Task Force was appointed to develop an alternative to the pairings. The Task Force presented its report to the Board of Education on February 24, 1975 in which it recommended the use of magnet school programs to replace the pairings and to supplement the integration efforts of the District. The Defendant Board of Education on March 10, 1975, unanimously voted to implement the magnet school concept and appointed an Administrative Task Team for Quality Integrated Education. The Board adopted the Administrative Task Team Report on May 12, 1975, and instructed the school attorneys to proceed with the filing of this motion to amend this Court's Amended Decree of September 18, 1970. The Court ordered that, effective at the beginning of the 1975-76 school year, the Defendants shall implement the Magnet School Plan. (Author/JM)

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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

DELORES ROSS, A MINOR, BY HER NEXT FRIEND, MARY ALICE BENJAMIN, ET AL,	§	
Plaintiffs	§	
UNITED STATES OF AMERICA,	§	
Plaintiff-Intervenor	§	
VS.	§	CIVIL ACTION NO. 10444
HOUSTON INDEPENDENT SCHOOL DISTRICT, ET AL,	§	
Defendants	§	

DEFENDANTS' MOTION TO AMEND DECREE

Comes now the Houston Independent School District, Defendant in the above cause, and files this, its Motion to Amend the Amended Decree of this Court entered September 18, 1970, and would show the Court as follows:

I.

On June 1, 1970, this Court entered its Memorandum and Order requiring the Houston Independent School District to operate its schools beginning with the 1970-71 school year under an equi-distant zoning plan. On August 25, 1970, the Decree entered pursuant to this Court's Order was reversed in part by the United States Court of Appeals for the Fifth Circuit, and the following modifications by way of pairing and rezoning of these elementary schools was ordered:

592

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff-Intervenor	§	
	§	
VS.	§	CIVIL ACTION NO. 10444
	§	
HOUSTON INDEPENDENT SCHOOL DISTRICT, ET AL,	§	
	§	
	§	
Defendants	§	

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UD 015592

MODIFICATIONS

Atherton.....pair with Eliot and Scroggins
Bruce.....pair with Anson Jones
Burrus.....pair with Roosevelt
Crawford.....pair with Sherman
Dodson.....pair with Lantrip

J. W. Jones.....pair with Fannin (Fannin burned in October, 1970 and the Fannin Boundaries were incorporated into the J. W. Jones boundaries)
N. Q. Henderson.....pair with Pugh
Pleasantville.....pair with Port Houston
Ross.....pair with Ryan and Looscan
Rhoads.....pair with Frost
Sanderson.....pair with Easter and/or Chatham
MacGregor.....rezone with Poe to desegregate MacGregor

II.

Through these pairings and the rezoning of Poe and MacGregor the Court of Appeals reduced the number of all or virtually all-Black elementary schools. In ordering these modifications the Court of Appeals stated:

> "The district court is directed to implement the foregoing modifications as to the elementary school zones or alternatively the court may adopt any other plan submitted by the school board or other interested parties, provided, of course, that such alternate plan achieves at least the same degree of desegregation as that reached by our modifications." 434 F.2d 1140, 1148

III.

The Defendant District implemented a modified version of these pairings in January of the 1970-71 school year, and after the rejection of this approach by this Court, the pairings and the rezoning as ordered by the Court of Appeals were fully implemented by the District at the beginning of the 1971-72 school year. Since the complete implementation of the pairings and the rezoning, the number and percentage of white students attending the paired schools have substantially decreased. In the 1974-75 school year only one pair of schools, Burrus and Roosevelt, has an average student enrollment that is 10 percent or greater White. All of the other paired schools have combined Black and Brown minority enrollments which

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III.

The Defendant District implemented a modified version of these pairings in January of the 1970-71 school year, and after the rejection of this approach by this Court, the pairings and the rezoning as ordered by the Court of Appeals were fully implemented by the District at the beginning of the 1971-72 school year. Since the complete implementation of the pairings and the rezoning, the number and percentage of white students attending the paired schools have substantially decreased. In the 1974-75 school year only one pair of schools, Burrus and Roosevelt, has an average student enrollment that is 10 percent or greater White. All of the other paired schools have combined Black and Brown minority enrollments which exceed 90 percent.

The failure of pairing to maintain an acceptable level of integration over its five-year history, community dissatisfaction with the pairings and the inquiry of this Court prompted

the District's General Superintendent to recommend to the Board of Education that a community Task Force be appointed to develop an alternative to the pairings. (A copy of Honorable Ben C. Connally's letter of October 24, 1974 to Messrs. Weldon H. Berry and Harry W. Patterson concerning the pairings is attached as Exhibit "A".) On November 25, 1974, the District's Board of Education authorized the appointment of the Task Force whose members were given the responsibility to develop a quality, integrated education program which would: (1) stall or stop the flight of residents from the urban schools by offering quality education; (2) promote integration; (3) offer additional educational opportunities for students of the District; and, (4) bring about an alternative to the pairing of schools which no longer meets the needs of the District.

The Task Force was composed of twenty-one members; seven Blacks, eight Browns, and six Whites. Nine of the members were from District staff, and there were eight females and thirteen males. The Task Force met at least twice weekly and on several week-ends from December 2, 1974 through February 24, 1975. The Task Force members visited other school districts operating under court orders to study their desegregation techniques, reviewed integration methods with consultants and held numerous public hearings within the District. The Task Force presented its report to the Board of Education on February 24, 1975, in which it recommended the use of magnet school programs to replace the pairings and to supplement the integration efforts of the District. (The

authorized the appointment of the Task Force which were given the responsibility to develop a quality, integrated education program which would: (1) stall or stop the flight of residents from the urban schools by offering quality education; (2) promote integration; (3) offer additional educational opportunities for students of the District; and, (4) bring about an alternative to the pairing of schools which no longer meets the needs of the District.

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V.

The Defendant Board of Education on March 10, 1975, unanimously voted to implement the magnet school concept and appointed the Administrative Task Team for Quality Integrated Education to develop an alternative to the pairings based on the magnet school concept. The Administrative Task Team was composed of seven Blacks, three Browns and six Whites with at least one staff member from each of the six administrative areas of the District. The Administrative Task Team prepared a Report for the General Superintendent and the Board of Education of the Houston Independent School District, Exhibit "B", utilizing the procedures outlined in the Exhibit. The Board of Education received the Administrative Task Team Report on May 6, 1975, after which members of the Task Team conducted various public meetings and hearings concerning the Report. The Board adopted the Administrative Task Team Report on May 12, 1975, by a 6-0 vote and instructed the school attorneys to proceed with the filing of this Motion to amend this Court's Amended Decree of September 18, 1970.

VI.

The Administrative Task Team Report, Exhibit "A", is a broad plan based on programatic integration commonly known as the Magnet School Plan. Under this educationally based integration plan, Phase I (31 schools) would be implemented in September 1975, and Phase II (11 schools) would be implemented in September 1976. In addition to these 42 magnet schools, the Magnet School Plan includes the use of five centers located at schools which have student bodies 90

percent or greater White or 90 percent greater combined Black and Brown. The students for these centers will come primarily from schools with student bodies 90 percent or greater White or 90 percent or greater Black and Brown combined. The students participating in these centers will share an integrated curriculum on a part time basis.

VII.

The statistical integration achieved through this magnet school program will far exceed the integration achieved through the existing pairings. After all schools have been unpaired, with the exception of Poe and MacGregor which were rezoned, the equidistance zone lines restored, and Phases I and II of the magnet school program fully implemented, the total campus magnets (the Separate and Unique Schools and the Add On programs) will reduce the number of one race schools (90 percent or greater Black and Brown combined or 90 percent or greater White) by four elementary schools, one junior high school and two senior high schools, a total of seven schools. The number of students at all educational levels attending one race schools will be decreased by Seven thousand six hundred fifty-four (7,654) students. (Pages 224-26, Exhibit "B".)

The five Cluster Centers will provide an integrated curriculum for 20,500 students on a part time basis. Seven thousand (7,000) elementary students will attend the Briargrove Center for 2/3 of one school day per year. Five thousand five hundred (5,500) different students will each attend 2/3 of 4 school days at Anson Jones, Port Houston and Sinclair for a total of 2/3 of twelve school days per student per year. Eight thousand (8,000) different students will parti-

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The students in attendance at any one time will reflect the District's ethnic composition. The students participating will be grouped in the programs so each student will be integrated with those from other ethnic groups. (Pages 227-28, Exhibit "B".)

The School Within a School magnets, separate schools housed on an existing school campus, are projected to have enrollments which reflect the District's ethnic and racial composition. The School Within a School students have a separate curriculum from that offered on the existing school campus for approximately 60 percent of the day but share approximately 40 percent of their academic time with the existing school's students. One hundred percent (100%) of the School Within a School student's non-academic school time, e.g., recess, lunch and assembly programs, is shared with the existing school's students. One thousand four hundred fifty seven (1,457) elementary students will attend eleven Schools Within a School, One thousand eighty four (1,084) junior high students will attend four Schools Within a School and One thousand thirty (1,030) high school students will attend six Schools Within a School for a total of Three thousand five hundred seventy-one (3,571) students at all educational levels. There are five one race elementary schools and one senior high school (90 percent or greater White or Black and Brown combined) where the combined enrollments of the Magnet Schools Within a School and the existing school programs will result in all students being integrated for the shared time. (Pages 229-33A, Exhibit "B".)

VIII.

The Magnet School Plan also includes placing total

school programs (Separate and Unique Schools and Add On programs) at some completely integrated schools in ethnically transitional neighborhoods. The addition of these programs is designed to stabilize the ethnic composition of the school, encourage tri-ethnic transfers to the integrated schools, encourage people to move into the District and discourage flight from the school attendance zone and the District. These programs also offer various options for students who have special interest abilities.

IX.

Other schools have been chosen as magnet schools exclusively for educational purposes. Although students of other ethnic groups will be encouraged and recruited to attend these schools, little increase in integration is anticipated; therefore, none is projected.

X.

The Magnet School Plan includes certain student admission and transfer guidelines which will insure the achievement of optimum integration and prevent racial isolation. These guidelines prevent students from transferring to a School Within a School or a single district-wide Add On or Separate and Unique School where the transfer will reduce the incidence of integration at the student's zoned school below 10 percent White or 10 percent combination Black and Brown. Where there are two Add On or Separate and Unique magnet schools district-wide, a student will be permitted to transfer to the magnet school only where the percentage of the student's ethnic group at the magnet school is below the student's district-wide ethnic percentage, i.e.,

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and Administrative Procedures, Section 721.100 is attached as Exhibit "C".

The Magnet School Plan contains other provisions to increase the probability of the Plan's success in achieving greater integration and quality education. A lower pupil-teacher ratio of 1 to 20-25 will be used in the magnet schools, and the professional personnel will be chosen according to their abilities to work in the programs. Since the pupil-teacher ratios for the entire school will be reduced on those campuses housing a School Within a School, the number of students transferring to the school by way of tri-ethnic policy is projected to increase. Extensive publicity concerning the availability of the programs together with the student transfer provisions is planned. With the exception of the Night High School, transportation for all students transferring to existing alternative schools or to a magnet school under this Magnet School Plan will be provided at District expense under the guidelines currently applicable to tri-ethnic transfers.

XII.

Plans for the implementation of the Magnet School Plan have been developed by the Administrative Task Team, and strategies have been developed to meet foreseeable problems. Unforeseen problems will inevitably arise in the implementation of the forty-six programs at forty-two schools over the two year implementation period. In order to effectively resolve these unforeseen problems, flexibility in implementing planned programs, substituting programs and readjusting administrative guidelines will be essential.

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XIII.

In preparing the Magnet School Plan, the student enrollment of the Houston Independent School District is divided into

three ethnic groups: Black, Brown (Mexican-American), and White. Although Defendant District has never discriminated against Mexican-Americans as an ethnic group, this division of ethnic groups is consistent with the District's policies of recognizing Mexican-Americans as a separate ethnic group for purposes of student and teacher assignment and transfer.

XIV.

This Court's Bi-Racial Committee reviewed the Task Force Report on March 6, 1975, advised the Board of Education of its acceptability and suggested that the Administration proceed in developing the specific programs. A copy of the Bi-Racial Committee's Minutes of March 6, 1975 is attached as Exhibit "D". After the Administrative Task Team Report was presented to them on May 6, 1975, the members of the Bi-Racial Committee reviewed the Report and gave their approval to its implementation in conjunction with the unpairing of the elementary schools. The May 12, 1975 memorandum of Ms. Carol Pinkett, Chairperson of the Bi-Racial Committee, to Mr. John Mullins, President of the Board of Education, is attached as Exhibit "E".

XV.

The integration to be achieved through the Magnet School Plan, attached as Exhibit "B" to this Motion, will far exceed the integration currently achieved through the pairing of these elementary schools. The unpairing of these schools will leave only Poe and MacGregor, ordered rezoned by the Court of Appeals, as the District's sole inconsistency with equidistance zoning for elementary schools. The Plan will in part be a voluntary supplement to the current desegregation efforts of the District. The Magnet School Plan,

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the development of the Magnet School Plan; free transportation will be provided, and student transfer provisions are written into the Plan to increase integration while preventing its decline. The magnet schools currently operating with the District have utilized various of these safeguards, and they have proven to be successful as an integration technique and as an approach to providing quality education. (Exhibit "B", pages 234-239 and Exhibit "G" of Exhibit "B".) With the Magnet School Plan, the Defendant District comes forward with a plan that promises realistically to work and promises realistically to work now. To successfully begin operating the Magnet School Plan at the beginning of the 1975-76 school year, implementation of the Plan must begin immediately; therefore, the District urges the Court to give immediate consideration to this Motion.

WHEREFORE, premises considered, the Houston Independent School District prays that the Amended Decree of September 18, 1970, be amended to provide for the unpairing of the elementary schools ordered paired by the United States Court of Appeals for the Fifth Circuit, that the original equidistant zone lines of the paired schools be restored, and that the Magnet School Plan, Exhibit "B", be approved for implementation.

Respectfully submitted,

Bracewell & Patterson

By_____
William Key Wilde
Attorney in Charge
1808 First City National Bank Bldg.
Houston, Texas 77002 223-5361

OF COUNSEL:

Kelly Frels
Bracewell & Patterson
1808 First City National
Bank Bldg.
Houston, Texas 77002

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Billy R. Reagan, General Superintendent of the Houston Independent School District; that he has read the foregoing Motion, and that the matters and facts stated therein are true and correct.

_____
Billy R. Reagan

SWORN TO AND SUBSCRIBED BEFORE ME on this ____ day of May, 1975.

_____
Notary Public in and for
Harris County, T e x a s

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

DELORES ROSS, A MINOR, BY HER NEXT FRIEND, MARY ALICE BENJAMIN, ET AL,	§	
Plaintiffs	§	
UNITED STATES OF AMERICA,	§	
Plaintiff-Intervenor	§	
VS.	§	CIVIL ACTION NO. 10444
HOUSTON INDEPENDENT SCHOOL DISTRICT, ET AL	§	
Defendants	§	

ORDER AMENDING DECREE

BE IT REMEMBERED that there came on for consideration by the Court the Motion of the Defendant Houston Independent School District for an Order amending the Amended Decree of this Court entered September 18, 1970, to provide for the unpairing of the elementary schools ordered paired by the United States Court of Appeals for the Fifth Circuit, the restoration of the paired schools' original equidistance zone lines and the implementation of the Magnet School Plan as set forth in Exhibit "B" to the Defendant's Motion to Amend Decree; and it appearing to the Court upon consideration of the verified Motion and the Memorandum filed by the Defendant Houston Independent School District in support thereof, that the Magnet School Plan would increase the incidence of integration from that presently achieved; it further appearing that the Magnet School Plan is feasible and workable, that procedures have been developed to increase

Plaintiff-Intervenor	§	
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It is therefore, ORDERED, ADJUDGED and DECREED that Paragraph VI of this Court's Amended Decree of September 18, 1970, be amended to provide as follows:

1. Effective at the beginning of the 1975-76 school year, the Defendants shall implement the Magnet School Plan designated in Exhibit "B" to the Motion to Amend Decree as Phase I.

2. Effective at the beginning of the 1976-77 school year, Defendants shall implement the Magnet School Plan designated in Exhibit "B" as Phase II.

3. Prior to the implementation of either phase of the Magnet School Plan, the Defendants may substitute a program in Phase I with a program designated to be implemented in Phase II.

4. Prior to the implementation of either phase of the Magnet School Plan, the Defendants may substitute other programs for any planned programs so long as the alternative is projected to produce the same or a greater degree of desegregation than that originally projected.

5. After the implementation of a program in either phase of the Magnet School Plan, the Defendants may substitute another program so long as the alternative will produce the same or a greater degree of desegregation than that achieved by the existing program.

6. Defendants may adopt additional programs similar to those proposed within the administrative procedures of the Magnet School Program.

7. Defendants may modify the administrative procedures of the Magnet School Program if such alterations are necessary and the incidents of integration are not adversely affected by increasing the number of students attending 90% or greater White or 90 percent or greater combined Black and Brown or increasing the number of schools 90 percent or greater White or 90 percent or greater combined Black and Brown.

8. The elementary schools ordered paired by the Court of Appeals for the Fifth Circuit may be unpaired at the beginning of the 1975-76 school year with the boundaries of the schools to be restored to the original equidistant zone lines ordered by this Court on June 1, 1970.

It is further ORDERED, ADJUDGED and DECREED that

3. Prior to the implementation of either phase of the Magnet School Plan, the Defendants may substitute a program in Phase I with a program designated to be implemented in Phase II.

4. Prior to the implementation of either phase of the Magnet School Plan, the Defendants may substitute other programs for any planned programs so long as the alternative is projected to produce the same or a greater degree of desegregation than that originally projected.

5. After the implementation of a program in either phase of the Magnet School Plan, the Defendants may substitute another program so long as the alternative will produce the same or a greater degree of desegregation than that achieved by the existing program.

6. Defendants may adopt additional programs similar to those proposed within the administrative procedures of the Magnet School Program.

7. Defendants may modify the administrative procedures of the Magnet School Program if such alterations are necessary and the incidents of integration are not adversely affected by increasing the number of students attending 90% or greater White or 90 percent or greater combined Black and Brown or increasing the number of schools 90 percent or greater White or 90 percent or greater combined Black and Brown.

8. The elementary schools ordered paired by the Court of Appeals for the Fifth Circuit may be unpaired at the beginning of the 1975-76 school year with the boundaries of the schools to be restored to the original equidistant zone lines ordered by this Court on June 1, 1970.

It is further ORDERED, ADJUDGED and DECREED that Paragraph VIII of this Court's Amended Decree of September 18, 1970, be amended to provide as follows:

J.

All substitutions of programs under the Magnet School Plan or alterations in administrative procedures of the Magnet School Plan shall be submitted to the Bi-Racial Committee for review. Substitutions of programs under the Magnet School Plan or alterations in administrative procedures of the Magnet School Plan made by the Defendants shall be included in the bi-annual reports to this Court.

K.

Defendants shall report the progress of implementing each magnet school program, the student enrollment by ethnic group and the teachers assigned to each program by ethnic group in each magnet school program in the bi-annual reports to this Court.

DONE at Houston, Texas, this ____ day of _____, 1975.

_____
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

DELORES ROSS, A MINOR, BY HER NEXT FRIEND, MARY ALICE BENJAMIN, ET AL,	§	
Plaintiffs	§	
UNITED STATES OF AMERICA,	§	
Plaintiff-Intervenor	§	
VS.	§	CIVIL ACTION NO. 10444
HOUSTON INDEPENDENT SCHOOL DISTRICT, ET AL,	§	
Defendants	§	

NOTICE OF SUBMISSION

TO: Weldon H. Berry, Attorney for Plaintiffs, 711 Main Street - Suite 620, Houston, Texas 77002, and Edward B. McDonough, Jr., United States Attorney, 515 Rusk, Houston, Texas 77001, and Joseph D. Rich, Assistant Attorney General, Department of Justice, 550 Eleventh Street N.W., Room 938, Washington, D. C. 20530, Attorneys for Plaintiff-Intervenor, United States of America

Please take note that Defendants' Motion to Amend Decree will be presented to one of the Judges of said Court in Houston, Harris County, Texas, United States Courthouse, on Monday, June 2, 1975, at 10:00 a.m. or as soon thereafter as counsel may be heard.

DATED this ____ day of May, 1975.

Bracewell & Patterson

By_____
William Key Wilde
Attorney in Charge
1808 First City National Bank Bldg.
Houston, Texas 77002 223-5361

OF COUNSEL:

UNITED STATES OF AMERICA,	§	
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Plaintiff-Intervenor	§	
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Please take note that Defendants' Motion to Amend Decree will be presented to one of the Judges of said Court in Houston, Harris County, Texas, United States Courthouse, on Monday, June 2, 1975, at 10:00 a.m. or as soon thereafter as counsel may be heard.

DATED this ____ day of May, 1975.

Bracewell & Patterson

By_____
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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

DELORES ROSS, A MINOR, BY HER NEXT FRIEND, MARY ALICE BENJAMIN, ET AL,	§	
Plaintiffs	§	
UNITED STATES OF AMERICA,	§	
Plaintiff-Intervenor	§	
VS.	§	CIVIL ACTION NO. 10444
HOUSTON INDEPENDENT SCHOOL DISTRICT, ET AL,	§	
Defendants	§	

MEMORANDUM OF AUTHORITIES IN
SUPPORT OF MOTION TO AMEND DECREE

The Defendant, Houston Independent School District (District), submits this Memorandum of Authorities in support of its Motion to amend the Amended Decree of September 18, 1970.

I.

PROCEDURAL HISTORY

On June 1, 1970, this Court entered its Memorandum and Order requiring the Houston Independent School District to operate its schools beginning with the 1970-71 school year under an equidistant zoning plan. On August 25, 1970, the Decree entered pursuant to this Court's Order was reversed in part by the United States Court of Appeals for the Fifth Circuit. A geographic capacity plan was ordered for the junior and senior high schools and the following modifications as to the elementary schools were ordered:

Atherton	pair with Eliot and Scroggins
Bruce	pair with Anson Jones
Burrus	pair with Roosevelt
Crawford	pair with Sherman
Dodson	pair with Lantrip
J. W. Jones	pair with Fannin (Fannin burned in October, 1970 and the Fannin Boundaries were incorporated into the J. W. Jones boundaries)
N. Q. Henderson	pair with Pugh
Pleasantville	pair with Port Houston
Ross	pair with Ryan and Looscans
Rhoads	pair with Frost
Sanderson	pair with Easter and/or Chatham
MacGregor	rezone with Poe to desegregate MacGregor

Through the pairing of these eleven all or virtually all-Black schools and the rezoning of another, the Court of Appeals reduced the number of such all or virtually all-Black schools. In ordering these modifications, the Court of Appeals directed this Court:

> ...to implement the foregoing modifications as to the elementary school zones or alternatively the court may adopt any other plan submitted by the school board or other interested parties, provided, of course, that such alternate plan achieves at least the same degree of desegregation as that reached by our modifications. 434 F.2d 1140, 1148

From the Court of Appeal's decision, the Defendant District petitioned the Supreme Court of the United States for a Writ of Certiorari. Two of the three reasons advanced for the granting of a Writ of Certiorari were based on the pairing of all or virtually all-Black elementary schools with other schools with predominantly Black and Mexican-American (Brown) student bodies. The United States Supreme Court denied the District's petition immediately after rendering its decision in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S. Ct. 1267 (1971). Eckels v. Ross, et al, 402 U.S. 953,

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The Defendant District implemented a modified version of the pairings ordered by the Court of Appeals in January of the 1970-71 school year, and after the rejection of this approach by this Court

desegregation efforts of the District. The Magnet School Plan,

on May 24, 1971, the pairings and the rezoning were fully implemented by the District at the beginning of the 1971-72 school year. Since the complete implementation of the pairings and the rezoning, the number and percentage of white students attending the paired schools have substantially decreased. In the 1974-75 school year only one pair of schools, Burrus and Roosevelt, with an average White student enrollment of 10.1 percent exceeds 10 percent White. All of the remaining paired schools have combined Black and Brown minority enrollments which exceed 90 percent.

II.

THE DEVELOPMENT OF THE MAGNET SCHOOL PLAN

The pairing of these elementary schools have from their inception been viewed by the District and its patrons as being educationally unsound and inappropriate as an effective desegregation tool. The failure of the pairing over its five-year history to maintain improved integration, together with the community dissatisfaction and the inquiry from this Court of October 24, 1974 prompted the District's General Superintendent to recommend to the Board of Education that a broad based community Task Force for Quality Integrated Education be appointed. The Board concurred, and on November 25, 1974, a twenty-one member Task Force composed of seven Blacks, eight Browns and six Whites was appointed. Nine of those appointed were District staff members, and there were eight females and thirteen males. The Task Force met at least twice weekly and on several week-ends from December 2, 1974 through February 24, 1975. The activities of the Task Force included visiting other school districts operating under a court ordered plan of desegregation, conferring with various consultants and conducting public

hearings. Exhibit "C", pages 2 and 3 of Exhibit "B" to the Motion to Amend Decree reflects the activities of the Task Force in greater detail.

The Board of Education received the Task Force Report on February 24, 1975, and unanimously voted to implement the magnet school concept as recommended by the Task Force. An Administrative Task Team composed of seven Blacks, three Browns and six Whites with at least one staff member from each of the six administrative areas of the District was appointed to develop the Magnet School Plan. The Administrative Task Team and its supportive personnel are listed in their entirety on pages 3-4 of Exhibit "B" to the Motion to Amend Decree.

The Board of Education received the Administrative Task Team Report on May 6, 1975. From May 6, 1975 until the adoption of the Report by the Board of Education on May 12, 1975, the members of the Administrative Task Team conducted various public meetings and hearings concerning the Report. As a result, certain additions and changes to the Report were made by the Board on May 12, 1975, which are included in Exhibit "B" to the Motion to Amend Decree.

ARGUMENT

Through its action on August 25, 1970, the Court of Appeals specifically directed this Court to order the implementation of the pairings and rezonings but also specifically recognized this Court's discretionary powers to accept alternatives. Ross v. Eckels, 434 F.2d 1140, 1148 (5th Cir. 1970) cert. denied 402 U.S. 953, 91 S. Ct. 1614 (1971). In doing so, the Court of Appeals specifically recognized the

from each of the six administrative areas of the District was appointed to develop the Magnet School Plan. The Administrative Task Team and its supportive personnel are listed in their entirety on pages 3-4 of Exhibit "B" to the Motion to Amend Decree.

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Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S. Ct. 1267 (1971).

By presenting the Magnet School Plan to the Court as an alternative to the existing paired schools and to supplement and further existing desegregation efforts, the Defendant Board of Education has come forth with a plan for quality, integrated education that promises to realistically work now. Green v. County School Board, 391 U.S. 430, 88 S.Ct. 1689 (1968). On the initiative of the Board and Administration, the community Task Force was appointed and made a thorough evaluation of the status of desegregation in the Houston District. This Task Force worked diligently to secure community input from all parts of the District; they conferred with numerous consultants including Mr. Robert Alexander of the Department of Justice, Dallas Regional Office; and, they visited other school districts operating under court orders to determine which desegregation techniques promised to realistically work in the Houston context. The major recommendation of the Task Force was that the existing pairings be removed and that the magnet school plan be implemented as a replacement (Exhibit "C," pages 74-75 included in Exhibit "B" to the Motion to Amend Decree).

Both the original community Task Force and the Administrative Task Team which prepared the Magnet School Plan, Exhibit "A," for implementation were representative of the Houston schools' population of 41.9% Black, 19.0% Brown and 39.1% White. The Task Force had twenty-one members with various social and political backgrounds and included seven Blacks, eight Browns and six Whites. (Exhibit "C", pages 29-46, included in Exhibit "B" to the Motion to Amend Decree.) The Administrative Task Force was composed of seven Blacks,

three Browns and six Whites. The composition of these teams and their contact with numerous community groups have insured as many groups as possible an opportunity to contribute their ideas to integration in Houston. Such community involvement is significant in developing integration plans. Davis v. Board of School Commissioners of Mobile County, 483 F.2d 1017 (5th Cir. 1973).

In the preparation of the Task Force and Task Team Reports, the student population of the District was divided into three groups; Black, Brown (Mexican-American) and White. The charts illustrating the degree of desegregation to be achieved through the Magnet School Plan (Exhibit "B" to the Motion to Amend Decree, pages 224-239) are based upon 90% or greater White, Black or Brown or combined minority, Black and Brown.

The Defendant District has never discriminated against Mexican-Americans as an ethnic group, but in testing the effectiveness of the Magnet School Plan it is necessary to determine the effect on combined minority groups in addition to the effect on individual minority groups. The consideration of Mexican-Americans as a separate ethnic group for integration purposes in the Magnet School Plan is also consistent with Defendant's policies under which Mexican-Americans are recognized as a separate ethnic group for student and teacher assignment and transfer purposes.

The majority to minority provision of this Court's Amended Decree of September 18, 1970 was expanded to a tri-ethnic transfer policy after the Fifth Circuit Court of Appeal's decisions of Cisneros v. Corpus Christi Independent

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The majority to minority provision of this Court's Amended Decree of September 18, 1970 was expanded to a tri-ethnic transfer policy after the Fifth Circuit Court of Appeal's decisions of Cisneros v. Corpus Christi Independent School District, 467 F.2d 142 (5th Cir., en banc, 1972) and United States of America v. Texas Education Agency [Austin Independent School District], 467 F.2d 848 (5th Cir., en banc, 1972). After Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189, 93 S. Ct. 2686 (1973), this tri-ethnic policy was further modified by the Board to provide for a combination

of minority enrollments to determine eligibility to transfer from a school. Transportation is made available for all tri-ethnic transfers at District expense. These current HISD Board Policies and Administrative Procedures related to tri-ethnic transfer, Section 721.100, are attached as Exhibit "C" to the Motion to Amend Decree.

In projecting the statistical integration based on 90 percent or greater White, Black or Brown or Black and Brown combined, the District utilized the yardstick of this Court:

> I have had the feeling that the definition the intervenor's [United States] expert suggested to us was probably a fairly good rule of thumb or yardstick. He told us he considered an integrated school in which no less than ten percent of the students were composed of a single race. So that a school ten percent negro and ninety percent white would qualify. One ninety percent negro and ten percent white would qualify. And one with the school population ratio being anywhere in between, sixty-forty either way or fifty-fifty would qualify, but one with less than ten percent negroes or one with less than ten percent whites would not. Ross v. Eckels, (S.D. Tex., No. 10444, July 23, 1969) [Honorable Ben C. Connally's Verbal Preliminary Ruling].

The effectiveness of the equidistance and geographic capacity zoning plans ordered by this Court, Ross v. Eckels, 317 F. Supp. 512 (S.D. Tex. 1970) and the Court of Appeals for the Fifth Circuit, Ross v. Eckels, 434 F.2d 1140 (5th Cir. 1970) cert. denied 402 U.S. 953, 91 S. Ct. 614 (1971) was evaluated by this yardstick. The only modification of this rule of thumb which as been made by the District in the evaluation of the Magnet School Plan is the recognition of Mexican-Americans as a separate ethnic group and the combination of minorities Black and Brown, in evaluating

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The Court's Bi-Racial Committee has reviewed both the Task Force and the Task Team's Reports. After a work session with members of the Task Force on March 1, 1975, the Bi-Racial Committee met again on March 6, 1975, to evaluate

the Task Force Report. The following communication from the Bi-Racial Committee to the Board of Education was unanimously adopted:

> The Bi-Racial Committee endorses the concept of alternative schools in conjunction with abolishment of the pairing of schools believing, at this juncture, this would assist the integration of schools and promote quality education throughout the District.

A copy of the March 6, 1975 Bi-Racial Committee Minutes is attached as Exhibit "D" to the Motion to Amend Decree.

The Bi-Racial Committee received the Administrative Task Team Report, Exhibit "B" to the Motion to Amend Decree, on May 6, 1975. After reviewing the Task Team Report and evaluating it, the Bi-Racial Committee reported its consensus to the Board of Education through a May 12, 1975, memorandum from Ms. Carol A. Pinkett, Chairperson of the Bi-Racial Committee, to Mr. John D. Mullins, President of the Board of Education.

> As of this time, the general consensus of the Committee is that it had no objection to the conceptual design of the report. In fact, we feel that the Planning Team is to be commended for formulating such a comprehensive analysis of HISD's short and long range needs and goals as it relates to quality integrated education. (A copy of this May 12, 1975 Memorandum from Ms. Pinkett to Mr. Mullins is attached as Exhibit "E" to the Motion to Amend Decree.)

Since the full implementation of the pairings in September 1971-72, the numbers and percentages of White students attending the paired elementary schools has dramatically decreased. (Exhibits "A" and "B" included in Exhibit "B" to the Motion to Amend Decree). Currently, only one pair of schools, Burrus and Roosevelt, has an average White percentage

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Since the full implementation of the pairings in September 1971-72, the numbers and percentages of White students attending the paired elementary schools has dramatically decreased. (Exhibits "A" and "B" included in Exhibit "B" to the Motion to Amend Decree). Currently, only one pair of schools, Burrus and Roosevelt, has an average White percentage (10.1) which exceeds 10 percent. The pairings now reduce the number of one race schools by one (Burrus) and the number of one race students by 652. (Exhibit "J" included in Exhibit "B" to the Motion to Amend Decree.) Only Lantrip and Roose-

velt have 10 percent or greater White student bodies currently, and when the pairings are removed, Lantrip will have 16.6 percent White and Roosevelt will have 17.8 percent White. Lantrip was paired with Dodson, and Roosevelt was paired with Burrus to eliminate the one race character of Dodson and Burrus. The overall ethnic percentage of all students attending paired schools is 60.9 percent Black, 35 percent Brown and 3.9 percent White.

After all schools have been unpaired and the equidistance lines restored, and Phases I and II of the Magnet School Program fully implemented, the total campus magnets (the Separate and Unique Schools and the Add-On programs) will reduce the number of one race schools (90 percent or greater Black and Brown combined or 90 percent or greater White) by four elementary schools, one junior high school, and two senior high schools, a total of seven schools. The number of students at all educational levels attending one race schools will be decreased by Seven thousand six hundred and fifty-four (7,654) students. (See Exhibit "B" of the Motion to Amend Decree at pages 224-226 for the schedules which illustrate the effect of the Separate and Unique Schools and those with Add-on programs at the elementary, junior and senior high school levels.)

The five Cluster Centers will provide an integrated curriculum for 20,500 different students on a part-time basis. Seven thousand (7,000) elementary students will attend the Briargrove Center for 2/3 of one school day per year. Five thousand five hundred (5,500) different students will each attend 2/3 of four school days at Anson Jones, Port Houston,

White.

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Outdoor Center. The students participating in these centers will be selected from schools 90 percent or greater White or 90 percent or greater Black and Brown combined and other schools which are predominately of one ethnic group. The students in attendance at any one time will reflect the District's ethnic composition. The students participating will be grouped in the programs so each student will be integrated with those from other ethnic groups. (See Exhibit "B" of the Motion to Amend Decree, pages 227-228, for the schedule which illustrates the effect of the Cluster Centers.)

The School Within a School magnets, separate schools housed on an existing school campus, are projected to have enrollments which reflect the District's ethnic composition. The School Within a School students have a separate curriculum from that offered on the existing school campus for approximately 60 percent of the school day but share approximately 40 percent of their academic time with the existing school's students. One thousand four hundred fifty-seven (1,457) elementary students will attend eleven Schools Within a School, One thousand eighty-four (1,084) junior high students will attend four Schools Within a School, and One thousand thirty (1,030) high school students will attend six Schools Within a School for a total of Three thousand five hundred seventy-one (3,571) students attending Schools Within a School. There are five one race elementary schools and one senior high school (90 percent or greater White or Black and Brown combined) where the combined enrollments of the Magnet Schools Within a School and the existing school programs will result in all students being integrated for the shared time. The number of students attending one race schools

will be reduced by two thousand four hundred fourteen (2,414) for the time these students share with the Magnet School Within a School students. This number will be increased when one of the 90 percent or greater White or combined Black and Brown high school is selected for the senior high school Contemporary Learning Center. (See Exhibit "B" of the Motion to Amend Decree, pages 229-233A for the schedules which illustrate the effect of the Schools Within a School at the elementary, junior and senior high school levels).

The Magnet School Plan submitted by the District has safeguards and coercive regulations, guidelines and on-going evaluation requirements written into it which will contribute substantially to its success. The Needs Assessment Survey conducted by the District in 1974 reflected a District-wide desire for a lower pupil-teacher ratio than currently exists in the District's schools. In response, the Magnet School Plan provides for a teacher-pupil ratio of 1 to 20-25 for the Magnet Schools and the schools in whose building a Magnet School Within a School is located. It is anticipated that parents and students alike will seek this environment which will afford them closer association with the teacher. Since many Magnet Schools Within a School are located on one race school campuses, it is projected that parents and students will utilize the tri-ethnic transfer to attend the regular school program thereby contributing to the District's integration efforts.

The schools which will become Magnet School sites were carefully chosen by the Administrative Task Team. The selection of programs and locations was initiated by the six

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The schools which will become Magnet School sites were carefully chosen by the Administrative Task Team. The selection of programs and locations was initiated by the six Area Superintendents through a survey of all the principals in the District. A list of the programs suggested by the Community Task Force (Exhibit "C", pages 6-18, included in Exhibit "B" of the Motion to Amend Decree) was given to each

principal. Principals were encouraged to study the list, discuss it with teachers, Parent-Teacher Associations, Parent Advisory Committees and community leaders. The principals also reviewed the Community Needs Assessment Survey applicable to their schools. (Exhibit "F" included in Exhibit "B" to the Motion to Amend Decree.) Requests for magnet programs based on these data originated within each administrative area.

Final determination of program sites was made by the Administrative Task Team, the Area Superintendents and the General Superintendent. These were based on the following criteria: (1) requests from principals which had been approved by the Area Superintendents, (2) community projected program interest, (3) qualified staff already in the school, (4) locations easily accessible by freeways and main thoroughfares, (5) programs which were within the educational, integration and location guidelines established by the Task Force for Quality Integrated Education, and (6) facts and inferences from the District Needs Assessment Survey.

The goal of the Magnet School Plan is to achieve integration through quality educational programs. The integration goal at each School Within a School and Cluster Center is to have a student body which reflects the District-wide percentage of that instructional level, the combined percentages of which is 41.9 percent Black, 39.1 percent White and 19 percent Brown. The integration goal at each school with an Add-on program or which is a Separate and Unique School is to achieve the most integration possible in the entire school. To insure that the Magnet School Plan will not

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2076, 74-2262, 74-2263, 74-2253, Jan. 27, 1975).

The student transfer restrictions limit student transfers to a magnet school if the transfer will reduce the incidence of integration at the student's zoned school below 10 percent Black, Brown or White or combined Black and Brown. Where there are two District-wide magnet schools offering the same program for all students who attend the school, a student transfer will not be permitted where the student's ethnic percentage at the magnet school exceeds the student's ethnic percentage District-wide, i.e., the provisions of the tri-ethnic transfer policy will apply to the receiving of magnet schools. (Exhibit "B", pages 214-217 to the Motion to Amend Decree and Exhibit "C" included in Exhibit "B").

Each Magnet School Within a School has a predetermined number of students which the program can accommodate. Since the goal is to have the participants reflect the racial composition of the District by instructional level, qualified students will be admitted to reflect the District-wide ethnic ratios of the particular instructional level. If the enrollment goal for each ethnic group is not met by three weeks after the beginning of the school year, the positions may be filled by students from other ethnic groups; provided, however, that 10 percent of the designated vacancies will remain open for students of the particular ethnic group. The District will continue to recruit students from the appropriate ethnic group to fill the designated vacancies. By waiting to fill vacancies until three weeks after the beginning of school, by holding a certain percentage of positions open and by making an effort to recruit students to fill the vacancies, the Plan offers greater promise that the

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Students who meet the qualifications for admission to a particular program will be admitted on a "first-come,

first-served" basis so long as the ethnic goals permit the transfer. When a student is ineligible for a particular program because the ethnic goals have been filled, the student and his or her parents will be advised of similar programs where the student's ethnic goals have not been fulfilled, and the student is eligible for admission. The personnel of the District will give the student and parents the assistance necessary to aid in the enrollment of the student in the alternative program.

The Magnet School Plan provides that each student transferring to a magnet school in another attendance zone will be offered free transportation by the District. (Exhibit "B" to Motion to Amend Decree, page 201, and Exhibit "M" included in Exhibit "B".) Transportation for magnet school transferees will be made available on the same basis as it is to those exercising the tri-ethnic transfer. Ross v. Eckels, 434 F.2d 1140, 1148 (5th Cir. 1970) cert. denied 402 U.S. 953, 91 S. Ct. 1614 (1971); Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S. Ct. 1267 (1971). By providing free transportation, the major economic impediment to a student's transferring from his or her zoned school is removed.

A comprehensive information system is built into the Magnet School Plan. (Exhibit "B" to Motion to Amend Decree, pages 211-13.) This media system will disseminate information concerning the Magnet School programs and the procedures students and parents must follow to secure admission. All news media will be utilized, and printed materials will be available in English and Spanish. Through this information system, it is intended that all the District's patrons will be as informed as possible of the programs available.

The programs included in the Magnet School Plan will be continually evaluated and monitored by the District to insure their successful operation as an educational concept and as an integration technique. An outline of the evaluation concept which will be developed is reflected at pages 240-42 in Exhibit "B" to the Motion to Amend Decree. A more detailed evaluation process will be developed once the programs are implemented. Reports will be made to this Court through the Bi-Racial Committee and the District's bi-annual report.

A crucial factor in the success of any school program is the ability of the professionals to work with the children and administer the program. That factor is particularly important in the magnet school. No school was chosen as a magnet school site without the concurrance of the principal and the Area Superintendent. The teachers who will work with the boys and girls in the classrooms of the magnet school programs will be those with special competencies. They will be chosen through the application of a set of criteria based on interest, attitude, aptitude, personality and "success" traits of those who have been innovative and effective. (Exhibit "B", Motion to Amend Decree, pages 197-200, and Exhibit "K" included in Exhibit "B".) The teachers will be offered incentives to participate in the programs, and they will be exposed to extensive staff development programs. The magnet schools will be staffed in such a manner that each teaching staff reflects the percentages of Black, White and Brown teachers employed District-wide on each instructional level. The variances provided by the Amended Decree of September 16, 1970, as amended, will be applied.

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The achievement of integration through offering quality and unique educational programs in the Houston Independent School District has been recognized by this Court. In 1973

a group attempted to detach a portion of the Houston District and form the Westheimer Independent School District. In refusing to allow the detachment, this Court considered the educational offerings of the Houston District:

> ... The record reflects that H.I.S.D. has initiated a number of programs in which it takes much pride. It maintains a separate school and campus for students interested in each of the three categories: (a) visual and performing arts, (b) pre-medical training, and (c) its technical institute. Each of these schools draws interested and talented students in its particular field from throughout the District. Each is integrated ... Ross v. Houston Independent School District [Westheimer ISD] (S.D. Tex., No. 10444, April 14, 1973). [Emphasis Added]

Since the Westheimer hearing in 1973, the District has added other magnet schools to its curriculum. All have been successful in achieving integration while offering quality educational programs. These existing alternative or magnet schools have not been subject to all the restrictive guidelines on student attendance provided for the Magnet School Plan, nor has transportation been provided except when a student qualifies under the tri-ethnic transfer provisions. Even in the absence of these and other safeguards for success which have been provided in the Magnet School Plan, the programs have prospered. The existing alternative schools will begin operating under the guidelines of the Magnet School Plan before and during the 1975-76 school year. Free transportation will be provided to students who qualify under the guidelines, except for those attending the night high school. The magnet school concept has worked to bring about integration in the Houston District, and the Magnet School Plan realistically offers to work in the same manner. (See Exhibit "B" to Motion to Amend Decree, pages 234-39, and Exhibit "G" included therein

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Although this Court considered the operation of magnet schools and their effectiveness in achieving integration in 1973,

few courts have subsequently reviewed magnet school programs. In Brinkman v. Gilligan (Dayton, Ohio), _____ F.Supp. ____ (E.D. Ohio, No. 72-137, March 10, 1975), the Court found the Dayton Public Schools segregated and approved the School District's magnet school plan to integrate the entire school system. The Dayton Plan placed certain limitations on assignment of students to the magnet schools to better insure its probability of producing successful integration. Modifications of these limitations have been placed in the Houston Magnet School Plan and others discussed above have been added. While the magnet school plan in Dayton is the primary integration technique, the magnet school plan in Houston is a supplement to the existing equidistance and geographic zoning previously ordered by this Court and the Court of Appeals.

A significant integration decision involving the magnet school concept is Hart v. Community School Board of Education, New York School #21 et al, _____ F.2d _____ (2d. Cir., Nos. 74-2076, 74-2262, 74-2263, 74-2253, January 27, 1975). In Hart, the Second Circuit approved an integration plan which included the magnet school concept. The Court recognized that the magnet school concept was workable and that the plan under consideration contained certain coercive requirements which prevented it from being a freedom of choice plan. Houston's Plan has similar coercive requirements regulating student attendance which will encourage integration while preventing ethnic segregation or isolation.

The Hart Court agreed with the Court of Appeals for the Fifth Circuit when that Court approved the conversion of a formerly all Black academic high school into a fully inte-

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The Hart Court agreed with the Court of Appeals for the Fifth Circuit when that Court approved the conversion of a formerly all Black academic high school into a fully integrated center for exceptional children. Stout v. Jefferson County Board of Education, 483 F.2d 84 (5th Cir. 1973).